

(4) That such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony orally before the presiding officer, to allow the transcript or recording to be used.

If any portion of a transcript or recording of a deposition is made a part of the record as evidence on motion of any party, any other party may make a part of the record as evidence the remainder, or any other portion, of the transcript or recording.

(j) *Expenses.* Fees and reimbursements payable to an officer taking a deposition, or other person recording the testimony in the deposition, shall be paid by the party at whose instance the deposition is taken.

(k) *Subpoenas.* No subpoena can issue, to compel attendance, testimony, or production of documentary evidence, at an examination under this rule 9.

(l) *Agreement of parties.* In any case, any transcript or recording of any deposition, or any part of such a transcript or recording, may be made a part of the record as evidence by agreement of the parties other than a party failing to file an answer as required in these rules.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990; 60 FR 8465, Feb. 14, 1995]

§ 202.110 Rule 10: Prehearing conference.

(a) The presiding officer, at any time prior to the commencement of the hearing, may request the parties or their counsel to appear at a conference before the presiding officer to consider:

- (1) The simplification of issues;
- (2) The necessity of amendments to pleadings;
- (3) The possibility of obtaining stipulations of fact and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
- (4) The limitation of the number of expert or other witnesses;
- (5) The negotiation, compromise, or settlement of issues;
- (6) The exchange of copies of proposed exhibits;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for completion of the actions decided at the conference; or

(9) Such other matters as may expedite and aid in the disposition of the proceeding.

No transcript or recording of such a conference shall be made, but the presiding officer shall prepare and file for the record a written summary if any action is taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(b) *Manner of the prehearing conference.* (1) The prehearing conference shall be conducted by telephone or correspondence unless the presiding officer determines that conducting the prehearing conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or

(iii) Would cost less than conducting the prehearing conference by telephone or correspondence. If the presiding officer determines that a prehearing conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the prehearing conference, the prehearing conference shall be conducted by personal attendance of any individual who is expected to participate in the prehearing conference, by telephone, or by correspondence.

(2) If the prehearing conference is not conducted by telephone or correspondence, the prehearing conference shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the prehearing conference by personal attendance of any individual who is expected to participate in the prehearing conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to

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participate in the prehearing conference; or

(iii) Would cost less than conducting the prehearing conference by audio-visual telecommunication.

[43 FR 30510, July 14, 1978, as amended at 60 FR 8466, Feb. 14, 1995]

§ 202.111 Rule 11: Hearing, oral or written.

(a) *When held.* A hearing, oral or written, shall be held unless:

(1) Each respondent admits or is deemed to admit sufficient allegations of the complaint to support the full amount claimed by the complainant as reparation;

(2) Each respondent admits liability to the complainant in the full amount claimed by the complainant as reparation;

(3) Before a hearing has been completed the parties agree in writing that the proceeding may be decided on the basis of the record as it stands at the time such agreement is filed; or

(4) Before a hearing has been completed the parties settle their dispute or the complainant withdraws the complaint.

(b) *Whether oral or written.* The hearing provided for in paragraph (a) of this section shall be oral if:

(1) \$10,000 or more is in controversy and any respondent files a written request for an oral hearing with such respondent's answer; or

(2) \$10,000 or more is in controversy and any complainant files a written request for an oral hearing on or before the 20th day after service on such complainant of notice that no respondent has filed a timely request for an oral hearing; or

(3) Less than \$10,000 is in controversy and the presiding officer determines, upon written request by any party thereto, that an oral hearing is necessary to establish the facts and circumstances giving rise to the controversy. The hearing shall be written if not oral.

(c) *Withdrawal of request.* If \$10,000 or more is in controversy and a party has timely filed a request for oral hearing, such party may withdraw such request at any time prior to completion of an oral hearing. If such a withdrawal leaves no pending request for oral hear-

ing in the proceeding, and if the presiding officer has not decided that the hearing should be oral, each other party shall be served with notice of this and shall be given 20 days to request an oral hearing. If any party files a request for oral hearing in such time, the hearing shall be oral in accordance with paragraph (b) of this section.

(d) *Presiding Officer's recommendation.* The presiding officer may recommend voluntary withdrawal of a request for oral hearing, timely filed. Declining to make such withdrawal shall not affect the rights or interests of any party.

(e) *Representation.* Any party may appear in an oral hearing, or file evidence in a written hearing, in person or by counsel or other representative. For unethical or contumacious conduct in or in connection with a proceeding, the presiding officer may preclude a person from further acting as attorney or representative for any party to the proceeding; any such order of the presiding officer shall be served on the parties; an appeal to the Judicial Officer may be taken from any such order immediately.

[51 FR 42083, Nov. 21, 1986, as amended at 55 FR 41184, Oct. 10, 1990]

§ 202.112 Rule 12: Oral hearing.

(a) *Time, place, and manner.* (1) If and when the proceeding has reached the stage where an oral hearing is to be held, the presiding officer shall set a time, place, and manner for oral hearing. The time shall be set based upon careful consideration to the convenience of the parties. The place shall be set in accordance with paragraph (a)(2) of this section and careful consideration to the convenience of the parties. The manner in which the hearing is to be conducted shall be determined in accordance with paragraphs (a)(3) and (a)(4) of this section.

(2) The place shall be set in accordance with paragraphs (e) and (f) of section 407 of the Act, if applicable. In essence, under paragraphs (e) and (f) of section 407 of the Act, if the complainant and the respondent, or all of the parties, if there are more than two, have their principal places of business or residence within a single unit of